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SUBJECT: CABINET APPROVED REVISED SHIA FAMILY LAW, EVAW  
BILL; BOTH BILLS MOVE FORWARD

REF: KABUL 1335

¶1. (SBU) SUMMARY: On July 6 the Cabinet approved a revised Shia Family Law text. Reportedly, the Ministry of Justice (MOJ) review team deleted twelve major articles, and the Cabinet an additional article from the version signed by President Karzai. The Ministers also gave the nod to the draft Elimination of Violence against Women (EVAW) bill, which for months had been mired in administrative delays. MOJ will incorporate changes made by the Ministers and likely submit the final drafts to Parliament. Under Article 79 of the Constitution, however, President Karzai could, prior to Parliament's July 20 scheduled return from recess, enact either piece of legislation through presidential decree. Post obtained Dari language copies of both documents today and will provide a substantive analysis as soon as a translation is available. We will also consult closely with Afghan civil society and international partners in preparing our advocacy strategy. END SUMMARY.

Background: Karzai and MOJ promise civil society that revised Shia law will protect women's rights  
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¶2. (SBU) In June 20-21 meetings with civil society actors, Minister of Justice Danish and President Karzai said MOJ had largely completed revisions to the Shia Family Law and promised that the new text would satisfy civil society and women's rights groups. During the meetings, Danish read portions of the modified articles aloud, but did not hand over the complete text. Nevertheless, civil society and women's rights leaders uniformly told us they were pleased with the changes shared by Danish. Karzai also confirmed to civil society representatives that MOJ had incorporated their proposed amendments into the new text. During June 24-25 meetings, Ambassador-at-Large for Global Women's Issues Melanne Vermeer told Danish and Karzai that a revised Shia Family Law in line with constitutional guarantees of gender equality and a strong domestic violence law were priority issues for the U.S.

¶3. (SBU) However, in a meeting last week with Ayatollah Mohseni and other Shia Leaders, Karzai reportedly deflected blame for the revisions onto the international community, declaring he supported the original text, but that the international community forced the revisions. Karzai had told civil society representatives prior to his Mohseni meeting that he would push Mohseni to support the revised law.

July 6 Cabinet Meeting: Approved revised Shia Family Law and EVAW bill  
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¶4. (SBU) Minister of Commerce Shahrani told us on July 6 that after two hours of debate the Cabinet approved a revised Shia Family Law text that included many of the amendments pressed for by civil society. Director of the Office of Administrative Affairs' legislative department General Hamid

also confirmed that the Cabinet approved the revised Shia Family Law text and the EVAW draft bill on July 6. According to government officials, MOJ had deleted 12 major articles and added and amended several clauses. The Cabinet approved these revisions and reportedly made one significant deletion, removing clause three of article 133 which stated: "A husband can prevent his wife from any unnecessary action or actions, which are not according to her duties as specified by Sharia Law and are contrary to the local customs and the husband's benefits." Ashruf, Acting Director of MOJ's legislative department, said his department will incorporate the Cabinet's changes into the text and submit the final versions to Parliament.

¶5. (SBU) Parliament is currently scheduled to return from recess on July 20. Based on previous experience, and the added distractions of the election season, we would normally expect parliamentary review of the bills to take several months. However, Parliament is unpredictable--Speaker Qanooni controls the agenda and could decide to bring either bill to the floor earlier. Unquestionably, however, parliamentary review of both draft bills would spark a strong debate and attract extensive international and national media coverage, potentially undesirable for Karzai so close to voting day.

¶6. (SBU) Under Article 79 of the Afghan Constitution, President Karzai could also sign either draft into law through presidential decree before Parliament resumes on July 20. Article 79 states:

During the recess of the House of Representatives, the

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Government shall, in case of an immediate need, issue legislative decrees, except in matters related to budget and financial affairs. Legislative decrees, after endorsement by the President, shall acquire the force of law. Legislative decrees shall be presented to the National Assembly within thirty days of convening its first session, and if rejected by the National Assembly, they become void.

¶7. (SBU) Under this article, Parliament has the right to review legislation enacted through presidential decree. If Parliament exercises this right, makes changes, and the President signs the new text, Parliament's version would replace the presidential decree. It is important to remember, however, that in Afghanistan political consensus often trumps following a multi-step legal procedure. If stakeholders are largely satisfied with the Shia Family Law as modified, it is quite possible that Parliament would refrain from reviewing it.

Next Steps: Close coordination with civil society and the IC

¶8. (SBU) Post obtained a Dari language copy of both draft laws and will provide a more detailed commentary septel as soon as an English translation is available. We are coordinating closely with civil society and international partners in devising our strategy going forward.

Comment

¶9. (SBU) MOJ's pre-election completion of Shia Family Law revisions and Cabinet's speedy approval of the text strongly hint that political forces are afoot. If the revised Shia Family Law adequately addresses civil society's demands, enactment by presidential decree could avoid prolonged and potentially destructive parliamentary debate. Karzai's decision to enact legislation through decree, however, could draw criticism for heavy-handed use of his powers of incumbency.

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